

PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of

Eberhard FRITZ and Gerd PHILLIPPS

Appln. No.: 10/018,623

Group Art Unit: 3736

Filed: December 18, 2001

Examiner: Samuel Gilbert

For: RADIATION SOURCE FOR ENDOVASCULAR RADIATION TREATMENT

Attorney Docket No.: 3993.002

SUBMISSION OF EXECUTED DECLARATION AND POWER OF ATTORNEY
IN RESPONSE TO USPTO DECISION MAILED OCTOBER 14, 2003

Mail Stop PCT
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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TECHNOLOGY CENTER R3700

Sir:

Responsive to the Decision dated October 14, 2003, a copy of which is attached hereto, setting a one month period for submission of a new Inventors Declaration (see page 3, final paragraph of Decision), Applicants timely submits herewith:

1. Executed Declaration and Power of Attorney having a copy of the German language and English language applications attached.

No fee is believed to be due. However, The Commissioner is hereby authorized to charge any required fees that may be required for the continued pendency of this application, except for the issue fee, to Deposit Account Number 16-0877.

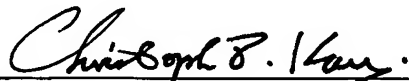
U.S. Application No.: 10/018,623
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IN RESPONSE TO USPTO DECISION MAILED OCTOBER 14, 2003

Attorney Docket No.: 3993.002

The Examiner is respectfully requested to acknowledge receipt of the above documents.

Respectfully submitted,

PENDORF & CUTLIFF
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Christopher J. Kay, Ph.D.
Registration No. 44,820

Date: November 13, 2003

U.S. Application No.: 10/018,623
SUBMISSION OF EXECUTED DECLARATION AND POWER OF ATTORNEY
IN RESPONSE TO USPTO DECISION MAILED OCTOBER 14, 2003

Attorney Docket No.: 3993.002

EXPRESS MAIL CERTIFICATE

"EXPRESS MAIL" MAILING LABEL NUMBER: **EV330254523US**

DATE OF DEPOSIT: **November 13, 2003**

I HEREBY CERTIFY that the foregoing SUBMISSION OF EXECUTED DECLARATION AND POWER OF ATTORNEY IN RESPONSE TO USPTO DECISION MAILED OCTOBER 14, 2003, executed Declaration and Power of Attorney having German language and English language applications attached, and a stamped receipt post card are being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 C.F.R. §1.10 on the date indicated and is addressed: **Mail Stop: PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450**

The Commissioner is hereby authorized to charge any additional fees, which may be required at any time during the prosecution of this application, except for the issue fee, without specific authorization, or credit any overpayment, to Deposit Account Number 16-0877.



Bonnie L. Horst



14 OCT 2003

UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS
UNITED STATES PATENT AND TRADEMARK OFFICE
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RECEIVED
OCT 27 2003
BY:.....

In re Application of
FRITZ et al.
Application No.: 10/018,623
PCT No.: PCT/EP00/05632
Int. Filing Date: 19 June 2000
Priority Date: 18 June 1999
Attorney's Docket No.: 3993.003
For: RADIATION SOURCE FOR
ENDOVASCULAR RADIATION TREATMENT

DECISION

This decision is in response to applicant's "PETITION UNDER 37 C.F.R. §1.181 TO WITHDRAW A HOLDING OF ABANDONMENT AND, ALTERNATIVELY, PETITION UNDER 37 C.F.R. §1.137(b) TO REVIVE ABANDONED APPLICATION" filed on 08 April 2003.

BACKGROUND

On 19 June 2000, applicant filed international application PCT/EP00/05632, which designated the United States and claimed a priority date of 18 June 1999 (18 June 2000 was a Sunday). A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 28 December 2000. A Demand for international preliminary examination, in which the United States was elected, was filed on 06 December 2000. Accordingly, the thirty-month period for paying the basic national fee in the United States expires at midnight on 18 December 2001.

On 18 December 2001, applicants filed, *inter alia*, a submission for entry into the national stage in the United States which was accompanied by, *inter alia*, an assertion of small entity status, the U.S. Basic National Fee for a small entity, and the surcharge for a small entity under 37 CFR 1.492(e) for providing the oath or declaration later than thirty months from the priority date.

On 21 February 2002, the United States Designated/Elected Office (DO/EO/US) mailed a NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 (FORM PCT/DO/EO/905) indicating, *inter alia*, that an oath or declaration of the inventors in compliance with 37 CFR 1.497(a)-(b) was required.

On 22 March 2002, applicants filed a "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES

DESIGNATED/ELECTED OFFICE”, which was accompanied by an executed declaration of inventors.

On 04 April 2002, the DO/EO/US mailed a NOTICE OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 indicating a 35 U.S.C. 371(c) date of 22 March 2002.

On 08 April 2003, applicants filed the instant “PETITION UNDER 37 C.F.R. §1.181 TO WITHDRAW A HOLDING OF ABANDONMENT AND, ALTERNATIVELY, PETITION UNDER 37 C.F.R. §1.137(b) TO REVIVE ABANDONED APPLICATION,” which was accompanied by, *inter alia*, a copy of a “RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE”, a copy of a declaration of inventors, a copy of a date-stamped postcard receipt, and a copy of a NOTIFICATION OF ABANDONMENT (FORM PCT/DO/EO/909).

DISCUSSION

The petition filed 08 April 2003 is directed to application number 10/018,623, titled “RADIATION SOURCE FOR ENDOVASCULAR TREATMENT”, attorney docket number 3993.03, and inventors Eberhard Fritz and Gerd Phillipps.

The copy of the NOTIFICATION OF ABANDONMENT accompanying the petition filed 08 April 2003 indicates the application number as 10/018,619, the first-named applicant as Eberhard Fritz, the attorney docket number as 3993.003 and indicates a mailing date for a NOTIFICATION OF MISSING REQUIREMENTS as 15 February 2002. The copy of the “RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE” filed 08 April 2003 contains the same identifying information as the petition but refers to a NOTIFICATION OF MISSING REQUIREMENTS mailed 21 February 2002.

The copy of the declaration of inventors filed 22 March 2002 identifies the application number as 10/018,623.

The postcard receipt date-stamped 22 March 2002 identifies the application number as 10/018,623, the inventors as E. Fritz and G. Phillips, the title as “RADIATION SOURCE FOR ENDOVASCULAR RADIATION TREATMENT”, and the attorney docket number as 3993.03.

Petition Under 37 CFR 1.181

The petition under 37 CFR 1.181 is moot; as noted above, the submission filed 22 March 2002 was entered and processed in application number 10/018,623.

Petition Under 37 CFR 1.137(b)

The petition under 37 CFR 1.137(b) is also moot; application number 10/018,623 has not

yet gone abandoned.

If applicant intends to revive application number 10/018,619 (the application number on the copy of the NOTIFICATION OF ABANDONMENT accompanying the petition), a petition must be filed for that application which properly identifies that application. A comparison of the Transmittal Letter for 10/018,619 and the Transmittal Letter for 10/018,623 show that for the two applications, the title, inventors, and attorney docket number are the same. Given the situation, **applicants should use great care to indicate the correct application number as it is the only reliable indicator used by applicant which is different in the two applications.** (Applicant has indicated different dates in the indication for the identifier "Filed" for application number 10/018,623. For example, the "RESPONSE TO NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE" filed 22 March 2002 indicates the application as having been filed on 17 December 2001. Note that this response seems to have been directed to the 10/018,623 application since it refers to the NOTIFICATION OF MISSING REQUIREMENTS mailed 21 February 2002. The Information Disclosure Statement filed 30 May 2002 in application number 10/018,623 indicates the application as having been filed on 18 December 2001. Thus, the "Filed" field is not a reliable indicator.)

The declaration of inventors filed 22 March 2002 is not in compliance with 37 CFR 1.497(a)-(b) because it fails to properly identify the application being executed. The declaration identifies the application being executed as 10/018,623 filed 17 December 2001. However, the request to enter the national stage for application 10/018,623 was filed 18 December 2001. Accordingly, the requirements of 35 U.S.C. 371(c) for entry into the national stage in the United States of America were not completed as of the 35 U.S.C. 102(e) and 371 dates indicated in the NOTIFICATION OF ACCEPTANCE mailed 04 April 2002. Accordingly, the 04 April 2002 NOTIFICATION OF ACCEPTANCE is hereby VACATED. (Also, the declaration filed 22 March 2002 includes a claim to a European priority application 9911099.0 filed 18 June 1999. However, the PCT application which application number 10/018,623 is a national stage of claims priority to European priority application 99111100.6 filed 18 June 1999.)

CONCLUSION

For the reasons set forth above, the petition under 37 CFR 1.181 is **DISMISSED** as **MOOT**.

For the reasons set forth above, the petition under 37 CFR 1.137(b) is also **DISMISSED** as **MOOT**.

Applicants are required to file in application number 10/018,623 a declaration of inventors in compliance with 37 CFR 1.497(a)-(b) within **ONE (1) MONTH** from the date of mailing of this decision. *Failure to timely file a proper reply will result in abandonment of the application.* **Note that the Final Office Action mailed 03 June 2003 remains in effect.** Consequently, two

time periods are running against the above-mentioned application. See MPEP § 710.04.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

This application is being forwarded to Art Unit 3736 for consideration of the proposed After Final Amendment filed 05 September 2003.



Daniel Stemmer
PCT Legal Examiner
PCT Legal Affairs
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Legal Administration
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DECLARATION AND POWER OF ATTORNEY

As a below named inventor(s), I/We hereby declare that:

My residence, mailing address and citizenship are as stated below next to my name.

I believe I am the original, first and sole inventor (if only one name is listed below) or an original, first and joint inventor (if plural names are listed below) of the subject matter, which is claimed and for which a patent is sought in the application entitled:

RADIATION SOURCE FOR ENDOVASCULAR TREATMENT

This declaration is directed to:

☒ the attached application
(for original application)

Application No. _____
filed _____, and amended on _____
(for declaration not accompanying application)

I hereby state that I have reviewed and understand the contents of the above identified specification, including the claims, as amended by any amendment referred to above.

I acknowledge the duty to disclose information which is material to patentability as defined in 37 CFR 1.56, including continuation-in-part applications, material information which became available between the filing date of the prior application and the national or PCT international filing date of the continuation-in-part application.

I hereby claim foreign priority benefits under 35 U.S.C. 119(a)-(d) or (f), or 365(b) of any foreign application(s) for patent, inventor's or plant breeder's rights certificate(s), or 365(a) of any PCT international application which designated at least one country other than the United States of America, listed below and have also identified below any foreign application for patent, inventor's or plant breeder's rights certificate(s), or any PCT international application having a filing date before that of the application on which priority is claimed:

Application No.	Country	Filing Date	Priority Claimed (yes or no)
99 111 106.6	Europe	June 18, 1999	yes

I hereby claim the benefit of Title 35, United States Code §120 of any United States application(s) listed below and, insofar as the subject matter of each of the claims of this application is not disclosed in a listed prior United States application in the manner provided by the first paragraph of Title 35, United States Code, §112, I acknowledge my duty to disclose any material information under 37 C.F.R. §1.56(a) which occurred between the filing date of the prior application and the national or PCT international filing date of this application:

Application No.	Filing Date	Status (patented, pending, abandoned)
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I hereby appoint Stephan A. Pendorf, Reg. No. 32,665; Yaté K. Cutliff, Reg. No. 40,577 and Evelyn A. Defillo, Reg. No. 45,630, my attorneys to prosecute this application and to transact all business in the Patent and Trademark Office connected therewith, and request that all correspondence about the application be addressed to Stephan A. Pendorf at Pendorf & Cutliff, P.O. Box 20445, Tampa, FL 33622-0445.

I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001 and that such willful false statements may jeopardize the validity of the application or any patent issued thereon.

Date 13. Dec. 2001 First Inventor Eberhard FRITZ
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Residence same as mailing Signature [Signature]
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Date 14. Dec. 2007

First Inventor

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